IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1002 OF 2007

Noor Ahmed Husain Kazi ...Petitioner

Versus

Razia Ibrahim Khalfe ...Respondent

Shri M.S.Kadu for the Petitioner.
Shri K.B.Shaikh for the Respondent.

CORAM : ABHAY S.OKA, J.
DATED : APRIL 26, 2007.

P.C.:

1. On 28th February, 2007 notice for final disposal was issued to the Respondent.

2. The Petitioner is the original Defendant in a suit filed by the Respondent in the Court of the Civil Judge, Junior Division at C.B.D Belapur. Summons of the suit was served to the Petitioner on 14th January, 2006. The Petitioner did not file written statement within the time stipulated by the provisions of the Code of Civil Procedure, 1908. An Application was made on 31st August, 2006 at Exhibit 13 for setting aside the order passed by the trial Court for proceeding with the suit without the written statement. By order impugned dated 14th December, 2006 the said Application was rejected.

3. The learned counsel appearing for the Petitioner

submitted that due to circumstances beyond the control of the Petitioner, he could not file the written statement as he was served with the summons while he was in Baharin. He stated that the Petitioner's employer did not sanction his leave. The learned counsel appearing for the Respondent submitted that there is hardly any excuse for not filing the written statement. He submitted that the Petitioner could have given instructions to the Advocate and could have filed the written statement thought he was unable to come to India. He, therefore, submitted that no interference was called for.

4. I have considered the submissions. It must be noted here that in the suit filed by the Respondent, the prayer is for dissolution of marriage between the Petitioner and the Respondent. It is also not in dispute that the Petitioner was served with the summons in a foreign country Baharin. It is stated in the Application that the Petitioner's employer did not sanction leave and he was informed that the Petitioner will be permitted to leave Baharin for India in November 2006. In the Application it is stated that it was not possible for the Petitioner to give full instructions to his Advocate. Even before the Petitioner came to India from Baharin, an application at Exhibit 13 was filed on

31st August, 2006 on which the impugned order has been passed. Considering the nature of the suit filed by the Respondent, it was necessary for the Petitioner to meet his advocate personally for giving instructions for drafting the written statement. It is stated that the Petitioner was not relieved by his employer. It is thus obvious that exceptional or extraordinary circumstances prevented the Petitioner from filing the written statement within the time provided by law. Therefore, a case was made out for setting aside the order to proceed with the suit without written statement.

5. It is true that prejudice will be cause to the Respondent as hearing of her suit will be delayed. The Petitioner has already deposited a sum of Rs.5,000/- in this Court by way of costs payable to the Respondent. The Petitioner will have to pay a further sum of Rs.2,500/- by way of costs to the Respondent.

6. Hence, I pass the following order:

(i) The impugned Judgment and Order dated 14th December, 2006 is quashed and set aside and Application at Exhibit 13 filed by the Petitioner is allowed subject to condition that if the written statement is already not tendered

on record, the same will be filed by the Petitioner on 06th June, 2007. The parties are directed to appear before the trial Court on 06th June, 2007 for that purpose.

(ii) If written statement is already tendered on record, the trial Court will take the same on record.

(iii) The Respondent is entitled to withdraw the sum of Rs.5,000/- deposited by the Petitioner in this Court. In addition to the said amount of Rs.5,000/-, the Petitioner will pay a further amount of Rs.2,500/- by way of costs to the Respondent on or before 06th June, 2007.

(iv) Hearing of the suit is expedited.

(v) Writ Petition is partly allowed in above terms.

(vi) Parties and concerned court to act upon an authenticated copy of this order.

JUDGE